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NOMADIX, INC.

[FOR A COMPLETE LISTING OF DEFENDANTS'  
COUNSEL REFER TO SIGNATURE PAGE]

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

NOMADIX, INC.,	)	Civil Action No.
Plaintiff,	)	CV09-08441 DDP (VBKx)
v.	)	<b>PROTECTIVE ORDER</b>
HEWLETT-PACKARD COMPANY et	)	Honorable Victor B. Kenton
al.,	)	
Defendants.	)	

AND RELATED COUNTERCLAIMS

**ORDER AND STATEMENT OF GOOD CAUSE**

Plaintiff Nomadix, Inc. and Defendants Hewlett-Packard Company, Wayport, Inc., iBAHN Corporation, Guest-Tek Interactive Entertainment Ltd., Guest-Tek Interactive Entertainment Inc., LodgeNet Interactive Corporation, LodgeNet StayOnline, Inc., On Command Corporation, Aruba Networks, Inc., Superclick, Inc. and Superclick Networks, Inc. (collectively, the “Parties”; individually, a “Party”) agree that disclosure and discovery activities in this action are likely to involve production of highly sensitive financial or business information or proprietary information that has not been disseminated to the public at large, that is not readily discoverable by competitors and that has been the subject of reasonable efforts by the respective Parties to maintain its secrecy, and for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Such information likely will include, among other things, sensitive product information, product design and development materials, engineering materials, marketing and sales information, purchase orders, invoices, distributor information, and customer information relating to network gateway devices and high-speed Internet access services.

Each Party wishes to ensure that such confidential information shall not be used for any purpose other than this action and shall not be made public by another Party beyond the extent necessary for purposes of this action. The Parties therefore seek to facilitate the production and protection of such information. The Parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The Parties further acknowledge that this Protective Order creates no entitlement to file confidential information under seal.

1 Good cause exists to enter the instant Protective Order to protect such  
2 confidential information from public disclosure. The confidential information  
3 includes information that could be used by actual or potential competitors to  
4 gain a competitive advantage in the marketplace. Moreover, at least some of the  
5 Parties are themselves competitors.

6 Accordingly, based upon the agreement of the Parties and for good cause  
7 shown,

8 IT IS HEREBY ORDERED that whenever, in the course of these  
9 proceedings, any Party or non-party has occasion to disclose information  
10 deemed in good faith to constitute confidential information, the Parties and any  
11 such non-party shall employ the following procedures:

12 **DEFINITIONS**

13 1. As used herein, “document” shall have the meaning ascribed to it  
14 in Federal Rule of Civil Procedure 34(a), and shall include all “writings,”  
15 “recordings,” and “photographs” as those terms are defined by Rule 1001 of the  
16 Federal Rules of Evidence.

17 2. The term “Litigation Material” encompasses all documents,  
18 exhibits, excerpts, summaries, pleadings, reports, declarations, affidavits,  
19 testimony, transcripts, interrogatory responses, admissions, or other discovery  
20 material and any copies thereof.

21 3. The term “Producing Party” refers to any Party or non-party that  
22 provides Litigation Material.

23 4. The term “Receiving Party” refers to any Party or non-party that  
24 receives, is shown or is otherwise exposed to Litigation Material.

25 5. The term “Action” refers to the suit pending in the United States  
26 District Court for the Central District of California as *Nomadix, Inc. v. Hewlett-*  
27 *Packard Company et al.*, Case No. CV09-8441 DDP (VBKx).

28 6. The term “Termination of this Action” refers to the completion of

1 this Action through exhaustion of all appeals from orders and final judgments  
2 and/or settlement by the Parties.

3 **DESIGNATION**

4 7. Any Producing Party may designate Litigation Material as  
5 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in accordance  
6 with this Protective Order.

7 8. Nothing in this Protective Order is meant to apply to source code or  
8 material designated “Highly Confidential – Source Code – Restricted Access  
9 Only Material.” The Parties anticipate addressing the designation of, disclosure  
10 of, and security provisions regarding source code in a separate addendum to this  
11 Protective Order to be filed later.

12 9. The terms “Confidential Material” and “Highly Confidential –  
13 Attorneys’ Eyes Only Material” refer to: any Litigation Material designated  
14 “Confidential” and “Highly Confidential – Attorneys’ Eyes Only,” respectively;  
15 any copies thereof; and the information contained in such Litigation Material or  
16 such copies, including summaries of such information. The term “Protected  
17 Material” refers collectively to Litigation Material that has been designated  
18 Confidential Material and/or Highly Confidential – Attorneys’ Eyes Only  
19 Material.

20 **Designation Procedure**

21 10. The designation of any Litigation Material as “Confidential” or  
22 “Highly Confidential – Attorneys’ Eyes Only” shall be deemed effective unless  
23 and until the Court orders otherwise or the Producing Party revokes the  
24 designation pursuant to paragraph 37.

25 11. To designate Litigation Material as “Confidential” or “Highly  
26 Confidential – Attorneys’ Eyes Only,” a Producing Party shall, when  
27 practicable, place the words “Confidential” or “Highly Confidential –  
28 Attorneys’ Eyes Only,” respectively, clearly on each page or portion of the

1 Litigation Material the Producing Party seeks to protect pursuant to this  
2 Protective Order. In particular, electronic documents, documents in native  
3 format and/or data shall be so marked when practicable and, when not  
4 practicable, the disks, hard drives, or other media containing such documents  
5 and/or data shall be appropriately marked.

6 12. If, during any deposition in this Action, (i) a Producing Party's  
7 Protected Material is disclosed or discussed or (ii), with respect to a given  
8 Producing Party, some of the deposition testimony otherwise qualifies for a  
9 confidentiality designation pursuant to any of paragraphs 15 through 16, the  
10 Producing Party may designate the pertinent deposition testimony (including  
11 exhibits) as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by:

- 12 (a) stating on the record during the deposition which portions of the  
13 testimony should be so designated; or  
14 (b) providing captioned, written notice to the reporter and all counsel of  
15 record of the page and line numbers of any portion of the transcript  
16 disclosing or discussing Protected Material, the number of any exhibits  
17 containing Protected Material, and the designation corresponding to  
18 each. Such notice by the Producing Party shall be given within thirty  
19 (30) business days after the Producing Party receives written notice  
20 that a final transcript is available for review, in which case all counsel  
21 receiving such notice from the Producing Party shall be responsible for  
22 marking the copies of the designated transcript or portion thereof in  
23 their possession or control as directed by the Producing Party.

24 13. If deposition testimony is designated pursuant to paragraph 12, one  
25 of the following legends, some combination thereof or a legend substantially  
26 similar to the same shall be placed on the front of any transcript or recording of  
27 such deposition:

28 Contains CONFIDENTIAL MATERIAL. Designated parts not to

1 be used, copied or disclosed except as authorized by court order or  
2 the party or parties whose CONFIDENTIAL MATERIAL is  
3 included.

4 or

5 Contains HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
6 ONLY MATERIAL. Designated parts not to be used, copied or  
7 disclosed except as authorized by court order or the party or parties  
8 whose HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY MATERIAL is included.

10 14. From the time of any deposition through the end of thirty-one (31)  
11 business days after a final transcript of the deposition is made available by a  
12 reporter, the deposition (including exhibits) and any transcript or recording  
13 thereof shall be treated as Highly Confidential – Attorneys’ Eyes Only Material.  
14 At the end of the thirty-one (31) business days, the deposition (including  
15 exhibits) and any transcript or recording thereof shall be treated as public  
16 information (with no confidentiality designation) except to the extent designated  
17 pursuant to paragraph 12.

18 **Designation Qualifications**

19 15. Litigation Material may be designated “Confidential” if it is or  
20 contains: (a) information that is non-public; (b) information that includes trade  
21 secret or other confidential research, development, or commercial information,  
22 the disclosure of which the Producing Party reasonably believes could cause  
23 harm to the business operations of the Producing Party or provide improper  
24 business or commercial advantage to others; or (c) information that is protected  
25 by a right of privacy under federal or state law or any other applicable privilege  
26 or right related to confidentiality or privacy.

27 16. Litigation Material may be designated “Highly Confidential –  
28 Attorneys’ Eyes Only” if it is or contains non-public information so

1 commercially sensitive that disclosure of the information to an unaffiliated Party  
2 or non-parties would likely harm the competitive commercial position of the  
3 Producing Party or a non-party. The following are sample categories of  
4 Litigation Material qualifying for the “Highly Confidential – Attorneys’ Eyes  
5 Only” designation:

- 6 (a) documents that describe the structure and/or operation of a Producing  
7 Party’s product at issue in this Action, including schematic diagrams,  
8 manufacturing drawings, engineering drawings, engineering change  
9 orders, engineering notebooks, specifications, software design  
10 documentation, system architecture documentation, research notes and  
11 materials, and other technical descriptions and/or depictions;
- 12 (b) documents relating to a Producing Party’s prosecution of (i)  
13 unpublished patent applications or (ii) patents that have not yet issued  
14 and that contain claims that are not publicly known;
- 15 (c) licensing and/or settlement-related documents including, but not  
16 limited to, communications with or between potential or actual  
17 licensors and licensees;
- 18 (d) financial data or information, including information concerning sales,  
19 revenue, profit margins, costs, capacity, return on investment, capital  
20 expenditures, yields, utilization, or similar benchmarks;
- 21 (e) customer lists;
- 22 (f) business, strategy, or marketing plans;
- 23 (g) price lists and/or pricing information;
- 24 (h) information obtained from a non-party pursuant to a non-disclosure  
25 agreement;
- 26 (i) agreements with any non-party, including OEMs, suppliers,  
27 distributors, and customers;
- 28 (j) negotiations related to the sale of any product manufactured or sold by

- 1 a Party or non-party, including data related to negotiations or sales  
2 opportunities;
- 3 (k) budgets, forecasts, and projections;
- 4 (l) any documents or things generated during the course of or as a result  
5 of any inspection of a Producing Party's facilities or process of  
6 product manufacture; and
- 7 (m) any other information or documents, the disclosure of which the  
8 Producing Party can demonstrate would cause a clearly defined and  
9 serious injury.

10 **DISCLOSURE**

11 17. Subject to the restrictions of paragraphs 18 through 19, a Receiving  
12 Party may disclose Protected Material to:

- 13 (a) its own "Outside Counsel," i.e., the law firm(s) that are counsel of  
14 record for the Receiving Party, including the firm(s)' associated  
15 attorneys, law clerks, analysts, paralegals, secretaries, translators,  
16 clerical staff and other persons regularly employed by such law  
17 firm(s), and any temporary personnel retained by such law firm(s) to  
18 perform legal or clerical duties or to provide logistical litigation  
19 support reasonably necessary to assist in the conduct of this Action—  
20 including service contractors (such as document copy services) and  
21 graphic artists—, provided that no person who is now or becomes a  
22 director, officer, or employee of a Party during the pendency of this  
23 Action shall be considered Outside Counsel;
- 24 (b) up to three designated in-house attorneys, legal counsel or employees  
25 of a Receiving Party deemed necessary by the Receiving Party's  
26 Outside Counsel to supervise or aid in the prosecution, defense, or  
27 settlement of this action, subject to the following: in the event that no  
28 objection is made pursuant to paragraph 35, the Receiving Party may



1 only begin to disclose Protected Material to any such in-house  
2 attorney, legal counsel or employee ten (10) business days after  
3 serving on the other Parties' counsel a copy of the confidentiality  
4 agreement attached to this Protective Order as Exhibit A signed by  
5 such in-house attorney, legal counsel or employee and in the event an  
6 objection is made pursuant to paragraph 35, the Receiving Party may  
7 not begin to disclose Protected Material to any such in-house attorney,  
8 legal counsel or employee unless and until the Receiving Party and the  
9 objecting party resolve their dispute as memorialized in writing or the  
10 Court denies the objecting party's motion brought pursuant to  
11 paragraph 35;

- 12 (c) outside experts and consultants (together with their associates and  
13 clerical staff whose duties and responsibilities require access to  
14 Protected Materials) specifically engaged by the Receiving Party or by  
15 any attorney described in sub-paragraphs (a) or (b) to assist in the  
16 Action, subject to the following: the Receiving Party may disclose  
17 Protected Material to such an expert or consultant only to the extent  
18 necessary to receive such assistance and, in the event that no objection  
19 is made pursuant to paragraph 35, may only begin to disclose  
20 Protected Material ten (10) business days after serving on the other  
21 Parties' counsel (i) a copy of the confidentiality agreement attached to  
22 this Protective Order as Exhibit A signed by such expert or consultant,  
23 (ii) a curriculum vitae of the proposed expert or consultant, including  
24 the expert or consultant's present business address(es), (iii) an  
25 identification of any past or present employment or consulting  
26 relationship with any Party, any related company or any company  
27 whose business relates or related to computer networks and an  
28 identification of the subject matter of any work performed in the

1 course of such relationship, and (iv) a description of the expert or  
2 consultant's employment or consulting during the past four (4)  
3 calendar years, including the name and address of each person or  
4 entity who employed or used the services of the expert or consultant  
5 and an identification of the subject matter of any work performed in  
6 the course of such employment or consulting; and in the event an  
7 objection is made pursuant to paragraph 35, the Receiving Party may  
8 not begin to disclose Protected Material to any such expert or  
9 consultant unless and until the Receiving Party and the objecting party  
10 resolve their dispute as memorialized in writing or the Court denies  
11 the objecting party's motion brought pursuant to paragraph 35;

- 12 (d) jury consultants, trial consultants or mock jurors specifically engaged  
13 by the Receiving Party or by any attorney described in sub-paragraphs  
14 (a) or (b) to assist in the Action, subject to the following: (1) the  
15 Receiving Party may disclose Protected Material to a jury consultant,  
16 trial consultant or mock juror only to the extent necessary to receive  
17 jury, trial or mock juror assistance; (2) the Receiving Party may only  
18 begin to disclose Protected Material to the jury consultant, trial  
19 consultant or mock juror after the individual has signed a copy of the  
20 confidentiality agreement attached to this Protective Order as Exhibit  
21 A, which copy the Receiving Party shall preserve for two (2) calendar  
22 years after the Termination of this Action; (3) any Protected Material  
23 in the form of physical documents or materials distributed to mock  
24 jurors under this subparagraph shall be retained by the Receiving Party  
25 at the time the mock juror's assistance has been completed; and (4)  
26 any jury consultant, trial consultant or mock juror to whom Protected  
27 Material is disclosed by the Receiving Party shall not be an officer,  
28 director, employee or attorney of the Receiving Party unless identified

1 pursuant to subparagraph (b);

2 (e) translators of foreign language documents and testimony who are not  
3 permanently employed by the Receiving Party, subject to the  
4 following: the Receiving Party may disclose Protected Material to  
5 such an individual only to the extent necessary to receive such  
6 translation assistance and may only begin to disclose Protected  
7 Material after the individual has signed a copy of the confidentiality  
8 agreement attached to this Protective Order as Exhibit A, which copy  
9 the Receiving Party shall preserve for two (2) calendar years after the  
10 Termination of this Action;

11 (f) any interpreter, or court or other shorthand reporter or typist  
12 translating, recording or transcribing testimony given in this Action;

13 (g) authors, actual recipients, and named recipients (as expressly  
14 identified on the face of such Litigation Material) of such Litigation  
15 Material, even if such authors or recipients are not currently employed  
16 by the Parties;

17 (h) any person the Producing Party has identified pursuant to sub-  
18 paragraphs (b) or (c), or any current and former officer, director,  
19 employee, agent, or Federal Rule of Civil Procedure 30(b)(6) designee  
20 of the Producing Party, during such person's deposition or other  
21 testimony in this Action; nothing in this subparagraph (h) prevents a  
22 Party or non-party from objecting to such a deposition;

23 (i) the Court, personnel of the Court and all appropriate courts of  
24 appellate jurisdiction;

25 (j) jurors serving in any trial of this Action; and

26 (k) any other person agreed to by the Producing Party in writing.

27 18. A Receiving Party may disclose Confidential Material only to the  
28 persons or entities identified in paragraphs 17(a) through 17(k).

19. A Receiving Party may disclose Highly Confidential – Attorneys’ Eyes Only Material only to the persons or entities identified in paragraphs 17(a) and 17(c) through 17(k).

20. Upon learning during the pendency of this Action or within one hundred eighty (180) calendar days of the Termination of this Action that the information provided pursuant to paragraph 17(c) is inaccurate or incomplete with respect to a given individual, a Receiving Party shall, for any Producing Party whose Protected Material the Receiving Party disclosed to the individual, notify the Producing Party of such inaccuracy or incompleteness as well as the information the Receiving Party learned that led to the awareness of such inaccuracy or incompleteness.

21. If Protected Material is to be disclosed during a deposition, any persons present at the deposition who are not authorized to receive such Protected Material under this Protective Order shall be asked to leave the deposition during the testimony concerning such Protected Material.

22. Notwithstanding the foregoing, if Protected Material makes reference to the actual or alleged conduct or statements of a person who a Receiving Party that is a Party has determined will be a witness, counsel for the Receiving Party may discuss the conduct or statements with the witness without revealing any other portion of the Protected Material and that discussion shall not constitute disclosure in violation of this Protective Order.

## SECURITY

23. Nothing in this Protective Order shall impose any obligation on a Producing Party regarding the security, maintenance, storage, transport and/or transmission of its own Protected Material.

24. To the extent any Receiving Party (apart from the persons identified in paragraph 17(i)) maintains Protected Material, the Receiving Party shall maintain the Protected Material in a secure and safe area and shall exercise

1 at least the same standard of due and proper care with respect to the storage,  
2 custody, use and/or dissemination of such information as is exercised by the  
3 Receiving Party with respect to its own proprietary information.

4 25. To the extent any Receiving Party (apart from the persons  
5 identified in paragraph 17(i)) discards or destroys Protected Material, the  
6 Receiving Party shall make reasonable efforts to do so in a secure manner.

7 **USE AND RETURN OR DESTRUCTION**

8 26. All Protected Material shall be used only in preparation for and  
9 trial of this Action, any appeal therefrom, or any proceeding to settle or resolve  
10 this Action. Protected Material cannot be used for any other purpose including,  
11 but not limited to, any business, proprietary, commercial, advancement of legal  
12 or equitable claims or defenses in any other litigation or legal proceeding,  
13 arbitration or proceeding, governmental purpose, or in connection with the  
14 preparation or prosecution of any patent application. Nothing in this Protective  
15 Order shall preclude a Producing Party from using or disseminating its own  
16 Protected Material in any way.

17 27. If a Receiving Party wishes to file any papers with the Court  
18 containing Protected Material, the proposed filing shall be accompanied by an  
19 application to file the papers or the portion thereof containing the Protected  
20 Material (if such portion is segregable) under seal in accordance with Local  
21 Rule 79-5.1. Such application shall be directed to the judge to whom the papers  
22 are directed. For motions, the Receiving Party shall publicly file a redacted  
23 version of the motion and supporting papers. For any proposed filing by the  
24 Receiving Party containing Protected Material (or any other papers to be served  
25 by the Receiving Party containing Protected Material), unless the Producing and  
26 Receiving Parties agree otherwise, the Receiving Party shall serve the Producing  
27 Party via e-mail, a secure FTP or an established overnight, freight, delivery, or  
28 messenger service with a copy of the papers wherein the Producing Party's

1 Protected Material is not redacted. The Receiving Party shall not serve the other  
2 Parties with such non-redacted copies of the papers. Instead, the Receiving  
3 Party shall only serve on the other Parties versions of the papers wherein the  
4 Producing Party's Protected Material is redacted; and if such an other Party  
5 would like non-redacted copies of such papers, it must request them from the  
6 Producing Party (and may seek the Court's assistance as necessary). Nothing in  
7 this paragraph 27 prevents a Defendant Receiving Party from serving on other  
8 Defendants a non-redacted copy of papers containing Protected Material of  
9 Nomadix subject to compliance with the other terms of this Protective Order.

10 28. The term "Protected Technical Material" refers to technical  
11 documents designated "Highly Confidential – Attorneys' Eyes Only" that  
12 describe the structure and/or operation of a Producing Party's product, including  
13 design documents, schematic diagrams, manufacturing drawings, engineering  
14 drawings, engineering notebooks, specifications, research notes and materials,  
15 and other technical descriptions and/or depictions, in whatever form such  
16 documents exist.

17 29. Any individual (including Outside Counsel) to whom any Protected  
18 Technical Material has been disclosed that was produced by another Party or  
19 non-party and that has not lost its confidential status, shall not thereafter, until  
20 two (2) calendar years after the Termination of this Action, on behalf of a patent  
21 applicant or patentee, prepare and/or amend any patent applications of any kind,  
22 draft and/or amend patent claims of any kind (including claims that are the  
23 subject of reissue or reexamination proceedings), supervise such activities, or  
24 consult on such activities whenever such patent applications or patent claims  
25 relate to (1) the patents-in-suit or contain claims that it is reasonably likely may  
26 be asserted against the Producing Party in this Action or any other action; and  
27 relate to (2) charging for, providing or controlling access to computer networks,  
28 or to network devices involved in charging for, providing or controlling access

1 to computer networks. Attorneys to whom Protected Technical Material has  
2 been disclosed may provide patent prosecution counsel with public information  
3 produced in this Action so that the information may be filed with the U.S. Patent  
4 Office. This paragraph shall not restrict consultation regarding strictly  
5 procedural or legal aspects of patent prosecution (including reissue or  
6 reexamination proceedings) that do not involve the merits, substance or  
7 technical nature of the patent prosecution. This paragraph shall also not restrict  
8 consultation regarding, or other involvement in, the preparation of arguments  
9 regarding prior art or patentability over prior art (including when such  
10 arguments are made in connection with reissue or reexamination proceedings).

11 30. Within ninety (90) calendar days of the Termination of this Action,  
12 all Parties, persons, and entities (including experts and consultants) who  
13 received Protected Material shall make a good faith effort to destroy or return to  
14 Outside Counsel for the Producing Party all Protected Material and any and all  
15 copies of such Protected Material, with the exception that Outside Counsel may  
16 retain a single copy of any of the following kinds of documents containing  
17 Protected Material: correspondence and legal files; papers served or filed in this  
18 Action (including discovery papers such as expert reports); transcripts; trial and  
19 deposition exhibits; and items introduced at trial of this Action. Outside  
20 Counsel may also retain any working files, e-mails or e-mail folders containing  
21 such materials. Outside Counsel need not purge their document management  
22 systems or back-up tapes. Within one hundred twenty (120) calendar days of  
23 the Termination of this Action, any Receiving Party shall certify in writing to  
24 any Producing Party that all Protected Material it received from the Producing  
25 Party, except as specifically identified in this paragraph, has been returned or  
26 destroyed.

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28 ///



**OBJECTIONS**

31. A Receiving Party or other interested person may object to the designation given by the Producing Party to any Protected Material. The process for making such an objection and for resolving the dispute shall be as follows:

- (a) The objecting party shall notify the Producing Party in writing as to its objections to the designation. This notice shall include, at a minimum, a specific identification of the designated material objected to as well as the reasons for the objections.
- (b) Within ten (10) business days of the Producing Party's receipt of such notice, the objecting party and Producing Party shall confer in person or by telephone in a good faith effort to resolve the dispute and shall permit any other party interested in maintaining the Protected Material's designation to participate in the conference.
- (c) If the conference does not resolve the dispute, the objecting party may bring a noticed motion to the Court pursuant to Local Rule 37 for a ruling that the Protected Material is not entitled to the designation given by the Producing Party or is entitled to a designation receiving greater protection under this Protective Order than that given by the Producing Party.

32. Notwithstanding any such challenge to the designation of Protected Material, all Protected Material shall retain its status as Protected Material with such designation until (a) the Producing Party revokes the designation pursuant to paragraph 37, or (b) the Court rules that the designation is not proper and orders that the designation be removed, possibly to be replaced with a different designation.

33. In any challenge to the designation of Protected Material, the Producing Party shall have the burden of establishing that, pursuant to



1 paragraphs 15 through 16, the Litigation Material is entitled to the designation  
2 the Producing Party gave it. Once the Producing Party meets this burden, the  
3 objecting party shall have the burden of rebutting the same or establishing that  
4 the Protective Order does not apply to the contested Litigation Material for any  
5 of the reasons set forth in paragraph 43.

6 34. No Receiving Party or other interested person shall be obligated to  
7 challenge the propriety or correctness of the designation of Protected Material  
8 and a failure to do so by a given date shall not preclude a subsequent challenge  
9 to such designation.

10 35. A Producing Party or other interested person may object to the  
11 proposed disclosure of Protected Material to any person described in paragraphs  
12 17(b) or 17(c). The process for making such an objection and for resolving the  
13 dispute shall be as follows:

14 (a) Within ten (10) business days of receiving the Receiving Party's  
15 written notice described in paragraphs 17(b) or 17(c), the objecting  
16 party shall notify the Receiving Party in writing as to its objections to  
17 the proposed disclosure. This notice shall include, at a minimum, a  
18 specific identification of the person objected to as well as the reasons  
19 for the objections.

20 (b) Within ten (10) business days of the Receiving Party's receipt of such  
21 notice, the objecting party and Receiving Party shall confer in person  
22 or by telephone in a good faith effort to resolve the dispute.

23 (c) If the conference does not resolve the dispute, the objecting party may  
24 bring a noticed motion to the Court pursuant to Local Rule 37 for an  
25 order prohibiting the proposed disclosure.

26 (d) The Receiving Party may not disclose Protected Material to the person  
27 objected to until, and only to the extent to which, (i) the Receiving  
28 Party and objecting party resolve their dispute as memorialized in

1 writing or (ii) the Court denies the objecting party's motion.

2 36. Any such challenge to the disclosure of Protected Material to a  
3 person identified pursuant to paragraph 17(b) or 17(c) may not be made or  
4 renewed absent a showing of good cause. As one example, such good cause  
5 might exist if the objecting party discovers information after the ten-day period  
6 of paragraph 35(a) that reveals a reason for making the objection of which the  
7 objecting party was previously unaware (e.g., a person identified pursuant to  
8 paragraph 17(c) is an employee of a competitor of the objecting party).

9 **REVOCATION OF DESIGNATION**

10 37. Any Producing Party that has designated any Litigation Material as  
11 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" pursuant to this  
12 Protective Order may revoke such designation and relinquish the accompanying  
13 protections provided by this Protective Order by so notifying counsel for all  
14 other Parties in writing or by so stating on the record at any hearing or  
15 deposition, provided that any such revocation and relinquishment shall not  
16 prejudice or otherwise affect the right any other Party or non-party may have to  
17 designate the same Litigation Material as "Confidential" or "Highly  
18 Confidential – Attorneys' Eyes Only." Upon so revoking and relinquishing, the  
19 Producing Party may re-designate the Litigation Material with a designation  
20 receiving less protection under this Protective Order than the original  
21 designation, in which case, unless the Producing and Receiving Parties agree  
22 otherwise, the Producing Party shall produce substituted, re-designated copies  
23 of the Litigation Material.

24 **INADVERTENT PRODUCTION, DISCLOSURE OR DESIGNATION**

25 38. A Producing Party that inadvertently produces Litigation Material  
26 that it believes is subject to the attorney-client privilege, attorney work product  
27 protection or any other privilege, immunity or non-waiver doctrine (e.g., the  
28 common interest doctrine) may, in writing, promptly upon discovery of such

1 inadvertent disclosure, so advise the Receiving Party and request that the  
2 Litigation Material be returned or destroyed. The inadvertent production of  
3 Litigation Material will not waive any applicable privilege, immunity or non-  
4 waiver doctrine. In addition, the fact that Litigation Material was inadvertently  
5 produced shall not be used in any manner as evidence in support of any such  
6 alleged waiver. Within five (5) business days of receiving said written notice  
7 and request from the Producing Party, the Receiving Party shall return or  
8 destroy such inadvertently produced Litigation Material, including all copies  
9 and any notes or summaries referring to or relating to any such inadvertently  
10 produced Litigation Material. Nothing herein shall prevent the Receiving Party  
11 from preparing a record for its own use containing the date, author, address(es),  
12 and topic of the Litigation Material and such other information that is not  
13 privileged or otherwise protected as is reasonably necessary to identify the  
14 Litigation Material and describe its nature in a motion to compel production of  
15 the Litigation Material. Such a record of the identity and nature of the  
16 Litigation Material may not be used for any purpose other than preparation of a  
17 motion to compel in this Action. After returning or destroying the inadvertently  
18 produced Litigation Material, the Receiving Party may challenge the Producing  
19 Party's claim(s) of privilege, immunity or non-waiver by motion.

20 39. A Producing Party that inadvertently failed to designate Litigation  
21 Material as "Confidential" or "Highly Confidential – Attorneys' Eyes Only"  
22 shall correct its failure within a reasonable time upon discovery of such  
23 inadvertent disclosure by providing written notice of the error and substituted,  
24 correctly-designated copies of the inadvertently produced Litigation Material.  
25 Any Receiving Party provided with such notice shall make reasonable efforts to  
26 retrieve and destroy all copies of the incorrectly designated Litigation Material,  
27 including copies disclosed or provided to others, as well as any notes or other  
28 materials relating to the incorrectly designated Litigation Material that this

1 Protective Order would not have permitted had the Litigation Material been  
2 correctly designated. The Receiving Party will not have violated, and will not  
3 be liable under, this Protective Order by relying on the incorrect designation  
4 (including the absence of any designation), including by, prior to receiving  
5 written notice of the error, disclosing the Litigation Material or any information  
6 contained therein consistent with this Protective Order and the incorrect  
7 designation.

8 40. In the event a Receiving Party inadvertently discloses Protected  
9 Material to a person not qualified to receive the information under the Protective  
10 Order, such Receiving Party shall, upon learning of the disclosure: (i) promptly  
11 notify such unqualified person that the Protected Material contains confidential  
12 information subject to this Protective Order; (ii) promptly use reasonable efforts  
13 to retrieve the disclosed Protected Material from such unqualified person and  
14 any notes or other materials relating to the disclosed Protected Material and  
15 have such person execute the confidentiality agreement attached as Exhibit A to  
16 this Protective Order; (iii) promptly make all reasonable efforts to preclude  
17 further dissemination or use by such unqualified person; and (iv) bring all  
18 pertinent facts relating to such disclosure to the attention of the Producing Party  
19 within three (3) business days of learning of the inadvertent disclosure.

#### 20 **EXEMPTIONS**

21 41. Nothing in this Protective Order authorizes any Party or non-Party  
22 to disobey any lawful request, subpoena or order by any court or any federal,  
23 state, or foreign governmental agency. However, if another person, court, or  
24 any federal, state, or foreign governmental agency requests, subpoenas, or  
25 orders the production of Protected Material from any person or Party subject to  
26 this Protective Order, that person or Party shall promptly notify the Producing  
27 Party in writing of the request, subpoena, or order, so that the Producing Party  
28 may have an opportunity to appear and be heard on whether the Protected

1 Material should be disclosed. Should the Producing Party object to the  
2 production, it may seek appropriate relief from the appropriate court or agency,  
3 and pending such a request and, if necessary, the entry of an appropriate stay  
4 order, the person or Party receiving the request, subpoena, or order shall not  
5 produce the material in dispute so long as it may lawfully refuse.

6 42. Nothing in this Protective Order shall bar or otherwise restrict  
7 counsel from rendering advice to his or her client with respect to this Action  
8 and, in the course thereof, relying in a general way upon his or her examination  
9 of Protected Material produced in this Action, provided, however, that in  
10 rendering such advice and in otherwise communicating with his or her client,  
11 counsel shall not disclose the contents of Protected Material produced by any  
12 other Producing Party except as otherwise permitted by this Protective Order.

13 43. None of the provisions of this Protective Order shall apply to  
14 Litigation Material that was, is or becomes:

- 15 (a) available to the public at the time of its production hereunder;
- 16 (b) available to the public after the time of its production through no act,  
17 or failure to act, on behalf of the Receiving Party, its counsel,  
18 representatives or experts;
- 19 (c) known to the Receiving Party, or shown to have been independently  
20 developed by the Receiving Party, prior to its production herein  
21 without use or benefit of the produced Litigation Material;
- 22 (d) obtained outside this Action by the Receiving Party from the  
23 Producing Party without having been designated as confidential,  
24 provided, however, that this provision does not disturb any pre-  
25 existing obligation of confidentiality;
- 26 (e) obtained by the Receiving Party after the time of disclosure hereunder  
27 from a third party having the right to disclose the same; or
- 28 (f) previously produced, disclosed and/or provided by the Producing

1 Party to the Receiving Party or any third party without an obligation of  
2 confidentiality.

3 **MISCELLANEOUS PROVISIONS**

4 44. This Protective Order is without prejudice to the right of any  
5 Producing Party to seek further or additional protection of information. Nothing  
6 in this Protective Order shall be deemed to bar or preclude any Producing Party  
7 from seeking such additional protection, including, without limitation, an order  
8 that certain matters may not be discovered at all.

9 45. This Protective Order is without prejudice to the right of any  
10 Receiving Party to seek modification of or relief from this Protective Order.  
11 Nothing in this Protective Order shall be deemed to bar or preclude any  
12 Receiving Party from seeking such modification or relief.

13 46. The entry of this Protective Order shall not be construed as a  
14 waiver of any right to object to the furnishing of information in response to  
15 discovery and, except as expressly provided, shall not relieve any Producing  
16 Party of the obligation of producing information in the course of discovery.

17 47. All notices required by this Protective Order are to be made by e-  
18 mail, certified mail or overnight mail to Outside Counsel representing the  
19 noticed Party or non-party. The date by which a Party or non-party receiving  
20 notice shall respond or otherwise take action shall be computed from the date of  
21 receipt of the notice. Any of the notice requirements herein may be waived in  
22 whole or in part, but only in writing signed by an attorney for the Party or non-  
23 party that is otherwise to be noticed.

24 48. Nothing in this Protective Order obligates a defendant in this  
25 Action to produce its Protected Material to other defendants in this Action.

26 ///

27 ///

1           49. The terms of this Protective Order shall survive and remain in  
2 effect after the Termination of this Action. The Court shall retain jurisdiction to  
3 hear disputes arising out of this Protective Order.

4  
5  
6 **IT IS SO ORDERED.**

7  
8 Dated: September 14, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
Honorable Victor B. Kenton  
United States Magistrate Judge

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12  
13 Respectfully submitted,  
14 KNOBBE, MARTENS, OLSON & BEAR, LLP

15  
16 Dated: August 6, 2010

By: /s/ Douglas G. Muehlhauser

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ENTERTAINMENT, INC. and  
ON COMMAND CORPORATION



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SUPERCLICK NETWORKS, INC.

**EXHIBIT A**

I have read and fully understand the Protective Order entered on \_\_\_\_\_, 2010 in the matter of *Nomadix, Inc., v. Hewlett-Packard Company et al.*, Case No. CV09-8441 DDP (VBKx), and agree to be bound by and comply fully with the terms of such order. Specifically, I will not disclose or permit the unauthorized viewing or disclosure of Protected Material as set forth in the Protective Order. Furthermore, if Protected Technical Material is disclosed to me, I will not, until two (2) calendar years after the Termination of this Action, on behalf of a patent applicant or patentee, prepare and/or amend any patent applications of any kind, draft and/or amend patent claims of any kind (including claims that are the subject of reissue or reexamination proceedings), supervise such activities, or consult on such activities whenever such patent applications or patent claims relate to (1) the patents-in-suit or contain claims that it is reasonably likely may be asserted against the Producing Party in this Action or any other action; and relate to (2) charging for, providing or controlling access to computer networks, or to network devices involved in charging for, providing or controlling access to computer networks. I further understand that failure to comply fully with the terms of such Protective Order may lead to sanctions imposed by the Court. I submit myself to the Court's jurisdiction for purposes of enforcement of the Protective Order.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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